

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

KEITH RANIERE,  
Defendant.

Case No. 1:18-CR-00204-NGG-VMS

MOTION FOR LEAVE OF COURT TO  
FILE SUPPLEMENTAL BRIEFINGS TO  
THE PRIOR RULE 33 (DKT. 1699)

Pursuant to Federal Rule of Civil Procedure 15(d), Mr. Keith Raniere, by and through his undersigned counsel, Joseph M. Tully, hereby moves Judge Nicolas G. Garaufis, or any other United States District Judge for the Eastern District of New York to whom this matter is assigned for leave to file a Supplemental Briefing to Document 1169, Defendant Keith Raniere's Motion for Rule 33 Relief, filed with this Court on May 3, 2022.

Dated: June 13, 2022,  
Martinez, CA

Respectfully submitted,

/s/ Joseph M. Tully

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## INTRODUCTION

In the present case, discovery of new evidence regarding the Western Digital hard disc drive, hereafter WD HDD, and the Canon digital camera with its compact flash card, hereafter CF card, is an ongoing process. Additional discovery remains outstanding that Defense experts have indicated is required for a complete understanding of the previously unattainable discovery.

In preparation for the Rule 33 Motion regarding new evidence of tampering by the government, filed on May 3, 2022, by the Defense as Document 1169, responses to the government's contemplated opposition have been researched and preemptively briefed. In doing so, it has come to the Defense's attention that additional briefing to fully address these issues is appropriate and would provide for the most efficient judicial proceedings. As no motion schedule has yet been set in the present case, such supplemental briefings would not prejudice the government, who have yet to reply to the original Rule 33 Motion.

Courts have broad discretion under Federal Rule of Civil Procedure 15(d) to grant leave for the filing of supplemental briefings, and such leave is warranted here because the supplemental briefing would (i) promote judicial economy and speedy disposition of the issues; (ii) will not cause undue delay or hearing inconvenience; and (iii) will not prejudice the government.

## ARGUMENT

### **I. THE COURT SHOULD PERMIT DEFENDANT KEITH RANIERE TO FILE A SUPPLEMENTAL BRIEFING TO THE RULE 33 MOTION.**

#### **A. The Court Has Broad Discretion to Permit a Supplemental Briefing.**

Federal Rule of Civil Procedure 15(d) empowers the Court to "permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d); see also *Arizona v. California*,

530 U.S. 392, 409 & n. 4 (2000). “An application for leave to file a supplemental pleading is addressed to the discretion of the court and should be freely granted when doing so will promote the economic and speedy disposition of the entire controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any of the other parties to the action.” 6A CHARLES ALAN WRIGHT, ET AL., FEDERAL PRAC. & PROC. CIVIL § 1504 (3d. ed. Sept. 2018 update) (footnotes omitted); see also *Baker Grp., L.C. v. Burlington N. & Santa Fe Ry. Co.*, 228 F.3d 883, 886 (8th Cir. 2000) (characterizing Rule 15 as “permissive for the parties and discretionary for the court”).

The supplemental briefings contemplated address an issue that technically has not yet arisen, and thus it is one that will occur after the date of the pleading to be supplemented. Fed R. Civ. P. 15(d). However, as the prior Rule 33 Motion raises an argument of new evidence, it is the good faith belief of the Defense, and a logical inference, that the government’s opposition will include the argument that this evidence was discoverable prior to trial. Rather than wait for this issue to be brought and for the Defense to address it in a Reply, the Defense seeks leave to provide additional briefing on this issue, and those peripheral issues around it, prior to the government’s preparation of their opposition.

This will allow for efficient responses and hearing of all the issues raised by the highly technical electronic evidence.

**B. Plaintiffs’ Proposed Supplemental Briefings Would Be Efficient and Give Rise to No Prejudice to the Government.**

The proposed supplemental briefing by the Defense, as previously stated, seeks to address the inevitable argument that the new evidence could have been discovered prior to trial. Any such argument forwarded would include in depth reference to the highly technical issues of the electronic device and corresponding information tampering which occurred here. While the

peripheral issues that such an argument raise are distinct from a new evidence argument, they do address the same behavior and implications from the prior motion and thus are most appropriately addressed in the same hearing.

Additionally, such supplemental briefings would not prejudice the government at all, and in fact would lead to efficiency in the government's response. There is not yet a motion schedule set in this current matter, nor any response from the government yet filed. Proceedings have been put on pause until final adjudication of the Appeal of the case.

Thus, such supplemental briefings would allow for both judicial and prosecutorial efficiency and induce no prejudice. Should the Court disagree about the supplemental briefings, the Defense requests, in the alternative, that an additional Rule 33 Motion be permitted to be filed.

## **CONCLUSION**

For all the reasons stated above, Defendant Mr. Keith Raniere respectfully requests that this Court grant his Motion for Leave of Court to File Supplemental Briefings.

Dated: June 13, 2022,  
Martinez, CA

Respectfully submitted,

/s/ Joseph M. Tully

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